IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9518 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HIRALAL G SIYAL

Versus

STATE OF GUJARAT

Appearance:

Mr.J.R.Nnanavati, with MR AR THACKER,
for Petitioner No. 1-40

Mr.S.N. Shelat, Advocate General, with Mr.M.K. Dagli, Assistant GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

M/S THAKKAR ASSOC. for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/10/2002

ORAL JUDGEMENT

1. The petitioners herein are the Ex-Councillors of Porbandar Nagarpalika. By filing this petition, they are challenging the order dated 3.9.2002, passed by the State Government, by which the Porbandar Municipality is ordered to be dissolved under the provisions of Section 263(1) of the Gujarat Municipalities Act and an Administrator is appointed to look after the affairs of the said Municipality. The aforesaid order of dissolving the said Municipality is passed on the ground that the Municipality has failed to discharge its duty. The proceedings were initiated by way of show cause notice dated 6th June, 2002. The said show cause notice was issued to the President of the Nagarpalika for the purpose of showing cause as to why proceedings under Section 263(1) of the Act should not be initiated against the Nagarpalika. In the said show cause notice, eight grounds are mentioned for the purpose of initiating the proceedings under the said proviso. The grounds mentioned in the show cause notice are at page 61.

Ground No.1 relates to non-removing of the garbage and dirt from one Memanwada area. It is mentioned in the said ground that for failure in performing their duty in keeping the said area clean, complaint was filed against the Municipality under Section 133 of the Code of Criminal Procedure and when the matter was examined through the Mamlatdar, it was noticed that some false rojkams were prepared and subsequently, the person, who had signed the said Rojkam, gave complaint to the Deputy Collector that he had signed the Rojkam without proper verification. It is mentioned in the show cause notice that the Nagarpalika has not taken appropriate care in keeping the said area clean and that the Municipality had failed to maintain cleanliness and has failed to provide necessary facilities in connection with the healthy and hygienic atmosphere of the town.

So far as ground No.2 is concerned, it is in connection with non-maintaining appropriate roads, which are affected in view of underground cabling and also in view of some cyclone which had taken place some time back.

Ground No.3 is in connection with not taking care of catching hold of dogs and other animals even though Municipality is having appropriate staff and vehicles in this connection. It is also mentioned in the said notice that about 25 cattle died due to the negligence on the part of the Municipality as they were not given appropriate water, etc. and no medical facility was made

available to such cattle and, accordingly, it is found that the Municipality has failed to carry out its duty.

Ground No.4 is regarding not providing appropriate drinking facilities to the citizens of the Town and accordingly, it is observed that the Municipality has failed to discharge its duty in distributing water in a proper manner.

Ground No.5 is regarding not maintaining sewerage and not cleaning the sewerage and non-maintenance of drainage system and that the Municipality is found to be negligent in maintaining the same.

Ground No.6 is in connection with certain irregularity in the matter of auctioning certain Municipal buses for which the President of the Municipality was also served with a notice.

Ground No.7 is in connection with renting out certain Municipal property without prior approval of the Competent Authority as well as regarding fixing upset price which resulted in monetary loss to the Municipality.

The last ground mentioned in the notice is in connection with fixing rateable value in the matter of assessing house tax and it is found that in certain cases, the Municipality has reduced house tax to an extent of more than 50% and in certain cases, it is reduced to 90% to 98%. It was found that no reasons are given as to on what basis such reduction is made and that, accordingly, by reducing the house taxes, the Nagarpalika has abused its powers, which resulted in monetary loss to the Municipality.

Each and every ground mentioned in the notice was replied by the Municipality through its President, by giving its explanation. It is also mentioned that the grounds mentioned in the show cause notice can never be taken as basis for dissolving the Panchayat. The Deputy Secretary of the Urban Development and Urban Housing Department, State of Gujarat, by his order, dated 3.9.2002, came to the conclusion that except ground No.7, mentioned in the show cause notice, it is established that rest of the grounds are found to have been proved and that, accordingly, the Municipality has failed to discharge its duty and accordingly, a decision was taken to dissolve the said Municipality under Section 263 of the Municipalities Act. The said order passed by the State Government, through the Deputy Secretary, is

impugned at the instance of the Councillors of the Municipality.

2. At the time of hearing of this petition, Mr.J.R. Nanavati, learned Senior Advocate, who is appearing for the petitioners, has vehemently submitted that the impugned decision is not taken bona fide and that the said decision is arbitrary, it suffers from the vice of non-application of mind and it is contrary to the principles of natural justice. It is submitted that the State Government was not having appropriate material for initiating proceedings against the Municipality and without there being any rational material on record, show cause notice was issued to the Nagarpalika. It is also submitted by Mr.Nanavati that even the initiation of the proceedings itself is bad, as, at the time of issuance of show cause notice, the State was not having any appropriate material with it. Not only that, no documents in connection with any of the alleged grounds were supplied to the Municipality. He submitted that for non-availability of necessary material, it was difficult for the Municipality even to defend such vague charges, as no particulars were given in the show cause notice. Mr.Nanavati also further submitted that at the request of the Municipality, subsequently, some documents were given in connection with two charges, i.e. charge Nos. 3 and 6. However, for rest of the charges, no material was made available to the petitioner. On the merits of the charges also, it is submitted by Mr.Nanavati that the grounds mentioned in the show cause notice as well as in the order are absolutely vague and there is no substance in any of the grounds mentioned in the notice as well as in the order.

3. Regarding each of the grounds, justification is given on behalf of the Municipality as regards each and every ground.

Notice dated 6th June, 2002 was served upon the Municipality. the said notice was initially replied on behalf of the Municipality, through their Advocate, vide reply dated 27th June, 2002. The said reply to the show cause notice was given by the President of the Municipality, through its Advocate. In the said reply, it is pointed out that notice is required to be given to all Councillors of the Nagarpalika and, therefore, initiation of the proceedings is illegal. It is also pointed out that no supporting material is given in connection with each of the charges levelled against the Municipality. It is also averred in the reply that as and when particulars are given, the Municipality will

give appropriate reply.

Initially, the petitioner has approached this Court at the show cause notice stage by filing a writ petition, being Special Civil Application No.6091 of 2002. Since it was at the show cause notice stage, the learned single Judge did not entertain the said Special Civil Application. However, the learned single Judge gave the following directions :-

> " ... ...
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> In view of the aforesaid statement made by Mr.Nanavati, Municipality is directed to act as per the said statement and since there are serious allegations of political mala fide, I am of the view that, the ends of justice would meet if, the order is passed superceding the Municipality, the same will not be implemented for a period of 10 days from the date of its communication to the Municipality.
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> 10. Subject to the aforesaid observation and direction, the petition is not entertained at this stage.
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> ... ..."

The aforesaid order was challenged by way of an appeal, being Letters Patent Appeal No.466 of 2002, and the order of the learned single Judge was set aside by the Division Bench in the Letters Patent Appeal.

In the meanwhile, the respondent No.1 furnished some documents in respect of charge No.3 regarding stray animals, dogs and cattle as well as in connection with ground No.6 in respect of irregularities committed by the Vice President in connection with auction of buses.

The Chief Officer, in the meanwhile, forwarded certain documents to the Deputy Secretary, by his letter dated 5.7.2002, which were in the possession of the Municipality.

Thereafter, on behalf of the Municipality, detailed reply was given, which is at page 97, Annexure 'K', dated 26.7.2002. In the reply, it is pointed out that the initiation of proceedings is actuated by mala

fides and that, individual notice was required to be issued to each of the members. It is also pointed out that necessary documents have not been supplied in connection with each and every charge and that the charges levelled are absolutely vague.

The Municipality also gave reply on merits as regards each of the grounds raised against it.

Regarding ground No.1 of the show cause notice, it is pointed out on behalf of the Municipality that no documents were supplied in connection with the complaints made to the Deputy Collector by a citizen of Porbandar Town, and the very fact of giving complaint by a citizen to the Deputy Collector is also denied by the Municipality. It is pointed out that there is no evidence that the Municipality has failed to carry out its obligation in the matter of maintaining cleanliness of the area. On behalf of the Municipality, the charge levelled against it on the basis of complaint of one citizen to the effect that the Rojkam in connection with the Memanwada area was signed without verification, is also denied. It is also averred in the reply that the Municipality is taking appropriate care in maintaining cleanliness of the City and maintaining its drainage. It is also pointed out that the Municipality has sent appropriate report to the Collector about the measures taken in the matter of making the city clean. It is also pointed out in the reply that simply at the instance of a solitary resident of a particular area, no cognizance was required to be taken by the authority for the purpose of initiating proceedings, as regards dissolution of the Municipality.

Regarding ground No.2, which is in connection with the non-maintenance of roads, etc., the Municipality also gave its justification by filing reply and it was pointed out that all the roads are properly maintained. It is pointed out that the vehicular traffic has increased in the Porbandar Town and, therefore, the roads are subjected to usual wear and tear and the Municipality has to spend amount from its limited resources for maintaining the same. In the reply, details have been given regarding work done by the Municipality in the matter of maintaining the roads, and in the matter of spending certain amount towards Bajpainagar Yojna.

Regarding ground No.3, it is submitted in the reply that no particulars have been given in connection with the said ground and that the charge levelled is absolutely of a general nature without giving any

specific instance. In this connection, it is pointed out that the DSP had informed the Municipality to take action in this connection and that the General Body had passed a Resolution on 30.10.2000, reserving Rs.1,00,000/- for the purpose of purchasing necessary infrastructure for the purpose of catching the animals, and providing them water, food, etc.

In connection with charge about death of some cattle, it is pointed out in the reply that a report was already submitted to the District Collector on 22.11.2001 in connection with the steps taken by the Municipality in this behalf. Regarding the aforesaid charge about allowing the stray cattle on the street, it is stated in the reply that all reasonable care is taken by the Municipality and certain letters and documents in that connection were also submitted along with the reply, which was given by way of Exhibit 10, and report was also submitted to the DSP.

Regarding charge in connection with not distributing water in proper manner, it has been pointed out in the reply that the said charge is absolutely vague and no particulars are given. In the reply, it is pointed out that since there is no proper distribution of water to the Nagarpalika by the Gujarat Water Resources Board, which is under the control of the State Government, the Municipality is not getting adequate quota of water, as required, and that the Board is deliberately giving less water to the petitioner-Municipality. It is also pointed out in this connection that the attention of the Board was also drawn by the Municipality by way of certain correspondence. Reference to such correspondence is also made in the reply. Some more particulars are also given in this connection in the reply, in detail.

In connection with the charge about not cleaning sewerage and removing the garbage and dirt, the said charge is also denied and particulars about the measures taken by the Municipality are also highlighted in the reply. Some documents are also annexed in this connection along with the reply. It is pointed out that there is no ground for taking action for dissolving the Municipality on the aforesaid ground.

In connection with the ground about handing over city bus service to private institutions and in connection with the irregularity alleged in the notice in disposing of certain municipal buses by way of public auction, it is pointed out that after passing appropriate

Resolution, the said decisions were taken. It is pointed out that the Municipality was incurring heavy losses in maintaining the aforesaid bus service and every year, average loss is to the tune of Rs.30,00,000/- to Rs.36,00,000/-, and, therefore, a request was made to the Gujarat State Transport Corporation to take away the Municipal bus service in their hand, but they did not accede to the said request. It was, therefore, recommended that the bus services may be handed over to private institutions and, ultimately, appropriate Resolution was passed by the Municipality. Regarding the alleged ground of selling certain buses by public auction, it was pointed out in the notice that rates were invited by way of public notice and the said procedure was conducted by the Vice President of the Municipality, who was the In-charge President at the relevant time and that, he was subjected to notice under Section 37 of the Gujarat Panchayats Act as to why he should not be removed for the aforesaid act. Therafter, an order was passed, removing him as Vice President, which action he has challenged by way of a writ petition, being Special Civil Application No.4405 of 2002, and that the High Court has admitted that petition and granted interim relief. It is pointed out in the reply that when proceedings have been initiated by the Vice President in his individual capacity and since this subject matter is in connection with some individual act, no proceedings for dissolving the entire Municipality can be taken on the basis of the aforesaid ground.

As regards leasing out certain shops is concerned, it is pointed out that the said decision was taken by the earlier body and, therefore, no proceedings can be initiated against the present body in any manner. Some more particulars were also given in the reply in connection with the aforesaid ground.

Concerning ground No.8, which is in connection with reducing the assessment towards house tax, it was pointed out in the reply that the decisions in this connection was taken by the appellate authority of House Tax Committee and that on merits, such decision is taken by the Committee. It is pointed out that the Appellate Authority, after considering the arguments of assessee, is taking independent decision in the matter of fixing annual letting value. It is pointed out that this being a decision of the appellate authority and since the appellate authority has taken decision as per law, the said ground cannot be taken into consideration for the purpose of dissolving the Municipality. It is also pointed out in the reply that even proceedings could have

been initiated against the members of the House Tax Committee or against the Chairman of the House Tax Committee under Section 37 of the Act or even the decision could have been taken in review under Section 258 of the Municipalities Act, but no such proceedings have been initiated by the Deputy Collector or the Collector. However, the Deputy Collector has not recommended any such action under Section 258 of the Act to the Collector. Under the circumstances, it was prayed that there is no substance in the said ground also.

The State Government, therafter, after considering the facts and circumstances of the case, and after considering the reply as well as after considering the arguments of the Municipality, passed an order under Section 263 of the Municipalities Act, dissolving the said Municipality.

It is not in dispute that except regarding two charges, for rest of the charges, no document is given to the Municipality at the relevant time. It is submitted by Mr.Nanavati that there are bunch of papers and it is not possible fer the Municipality to find out all these papers for the purpose of giving reply.

4. The contention of Mr.S.N. Shelat, learned Advocate General, is that these are the documents of the Municipality itself and it is always open for them to find out the documents which are in their custody and to give reply. But, considering the facts of the case, I am of the opinion that when the State Government decided to take proceedings against the Municipality, by which elected body was likely to be ousted from power, by dissolving the entire Municipality appropriate material, on the basis of which notice was issued to the petitioner-Municipality, was required to be given to it. It is, as such, not in dispute that for most of the charges, no documents were given and, in fact, there is nothing on record, by which the Court can come to the conclusion that at the time of issuing the notice, any material worth the name was available with the State Government for the purpose of initiating proceedings under Section 263 of the Municipalities Act.

5. It is submitted by Mr.Nanavati that a democratically elected body cannot be removed in such a casual manner and the decision taken by the State is nothing but a mockery of democratic system of the country. He submitted that the elected body has a right to continue in office for the period during which they have been elected and for that purpose, he has relied

upon Article 243U of the Constitution of India. He submitted that if recourse is made to the grounds mentioned in the show cause notice for dissolving the Municipality, then, all the Municipalities and local authorities will be required to be superseded, as, there would hardly be any Municipality, which would not have stray dogs or stray animals on its thoroughfares. He submitted that it is only the petitioner-Municipality, which has been singled out for issuance of notice and no other local authority is subjected to any such proceedings at any point of time on the ground that they have failed to control the menace of stray dogs and animals on the public roads. This argument is advanced by Mr.Nanavati in order to substantiate his say that the decision is not proper and it is taken for some oblique reasons. It is also argued by Mr.Nanavati that some of the incidents mentioned in the show cause notice relates to the period between 2000 and 2001 and still, for a considerable time, no action was taken and no show cause notice was issued, and that, with a purpose, the show cause notice issued, because, the elected body of the petitioner-Municipality was of Congress Party, while at the State level, it is BJP which is in power and, therefore, in order to see that the elected body may not be in power at the time when Assembly election is to be held, the aforesaid proceedings are initiated with that oblique purpose. It is submitted that the fact that there is a delay of more than one-and-a-half or two years, as the case may be, for initiation of such proceedings, itself is suggestive of the fact that the decision is not taken in a bona fide manner and it is taken after the announcement of the dissolution of the Assembly on 19th July, 2002. In the aforesaid background of the facts, it is stated that in order to remove the elected representatives because they are of the Opposition Party, the proceedings were initiated, which, according to him, is not a bona fide exercise of power.

It is also submitted that, even on merits, there is hardly any substance in any of the grounds alleged against the petitioner. Mr.Nanavati also very vehemently submitted that a solitary or stray incident is not enough for attracting the provisions of Section 263 of the Gujarat Municipalities Act, 1963. It is submitted that, for example, on a given day, for some reason, in a particular area, a stray cattle might be found on the road, and the same is no ground for dissolving the entire Municipality. It is submitted that there is nothing on record to show that at the time when the show cause notice was issued, there was any existing material available with the authority, by which a subjective

satisfaction could have been reached by the authority on rational ground that the Municipality is not in a position to perform its duty, which it is supposed to discharge as per the provisions of the Municipalities Act. The argument is advanced on the basis of remoteness of some of the incidents, which were not found to be in existence at the time when the Government decided to issue the show cause notice. Under these circumstances, it is submitted that unless there is material for coming to the conclusion that the Municipality is committing persistent default, or there is a serious act of misuse of power, it is not open for the Government to take proceedings for superseding the Municipality, which has serious civil consequences, by which democratically elected representatives are sent home. It is submitted that the proceedings, which have been initiated, show as to how a casual approach is taken by the State for passing the impugned decision.

6. It is also argued that the respondent No.3, who is a Minister in the State Cabinet, belongs to Porbandar Town and he is an MLA of the said Town and, accordingly, the petitioners have a strong feeling that only at his instance, these proceedings have been initiated and, according to Mr.Nanavati, he is likely to contest the fresh elections also, which, according to him, is going to be held in the month of December.

7.It is submitted that there are certain factual aspects, which are not even in the knowledge of the State Government and that there is no material worth the name with the State Government even for initiating the proceedings and, therefore, according to the petitioners, it is only the respondent No.3, who seems to have given certain information for the purpose of initiating the proceedings.However, considering the affidavit-in-reply of the respondent No.3,and considering the fact that there is absolutely nothing on record, by which the petitioners can substantiate the aforesaid allegation of mala fides against the respondent No.3, the petitioners, ultimately, gave up the said ground and Mr.Nanavati for the petitioners fairly submitted that they are not pressing the ground of mala fides,as there is no ground, on which the said ground of mala fides can be substantiated.In view of the aforesaid concession on the part of the petitioners, by which they have given up the allegation of mala fides against the respondent No.3, it is not necessary for the court to examine the aforesaid aspect.Considering the affidavit in reply of respondent No.3, there is nothing to suggest that the said decision was initiated by the State Government at the instance of

the said Minister. There is hardly any material to justify the said allegation, and, in any case, since the petitioners are giving up the said allegation of mala fides, it is not necessary to examine the question of mala fides alleged against the respondent No.3.

8. So far as the merit of the case is concerned, Mr.S.N. Shelat, learned Advocate General, submitted that the decision is taken after considering the grounds alleged against the petitioner-Municipality, which are, ultimately, proved at the time of taking final decision. So far as non-supply of necessary documents is concerned, Mr.Shelat submitted that some of the documents were in custody of the Municipality itself and, therefore, ti was possible for the petitioners to get a copy of the same, as they were part of the record of the Municipality itself. It is, therefore, submitted that even if those documents are not supplied to the petitioners, no prejudice is caused to the petitioners as they were in possession of the said documents. So far as the grounds alleged against the Municipality are concerned, Mr.Shelat tried to justify the grounds. He, however, submitted that even if a single ground is, ultimately, found to be relevant, the same can be taken into consideration, at the time of passing order under Section 263 of the Municipalities Act, even the order in question can be sustained on the availability of that one ground, ultimately, if it is found that there was rational and valid ground for initiating proceedings under Section 263. He accordingly tried to justify the decision taken by the Government.

9. I have heard all the Advocates in detail.

So far as the initiation of proceedings under Section 263 is concerned, it is useful to refer to the said Section. Section 263 provides as under :-

> " ... ...
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> 263. Power of State Government to dissolve or supersede municipality in case of incompetency, default or abuse of power.-(1) If, in the opinion of the State Government, municipality is not competent to perform, or deliberately makes default in the performance of, the duties imposed on it by or under this Act, or otherwise bylaw or exceeds or causes its powers, the State Government may, after giving the municipality as opportunity to render an

explanation, by an roder published, with the reasons therefor, in the Official Gazette declare the municipality toeb incompetent or in default, or to have exceeded or abused its powers, as the case may be, and may dissolve such municipality.

(2) Consequences of dissolution or supersession.- When the municipality is so dissolved, the following consequences of dissolution shall ensue:-

(a) all councillors of the municipality shall, in the case of dissolution as from the date specified in the order of dissolution, vacate their offices as such councillors;

(b) all powers and duties of the municipality shall, during the period of dissolution, be exercised and performed by such officer as the Director from time to time appoints in this behalf.

(3) Constitution of Municipality after dissolution.-(a) An election to constitute a municipality shall be completed before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the municipality fro such period;

(b) A municipality constituted upon the dissolution of municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved municipality would have continued had it not been so dissolved.

... ..."

10. So far as the various charges levelled against the Municipality is concerned, in my view, there is not a single charge which is such that it would warrant

dissolution of the elected body.

So far as ground No.1 is concerned, which is in connection with non-removing of garbage and dirt from the Town, the Municipality has given detailed reply in connection with the said charge. In the remote past, if it is found that from a particular area, the Municipal Authority has not effectively removed the garbage or dirt, the same can never be taken as a basis for the purpose of dissolving the entire Municipality. There is nothing on record by which one can say that any citizen of the Porbandar Nagarpalika made any complaint to the Collector or to any of the Officers of the State Government in this behalf. In my view, the alleged default of the Municipality in performing its duty or its incompetency in the matter of performing its duty, should be reflected at the time of initiating the proceedings. Something is required to be on record to show that at the relevant time, when the action was taken, material was available for coming to the conclusion that the Municipality is not competent to perform or deliberately makes default in the performance of the duties imposed on it. For that purpose, a particular stray instance of remote past can never be a guiding factor for initiating the proceedings. The learned Advocate General has also frankly conceded that there has to be existing ground available at the time of initiating the proceedings, by which it can be said that the Municipality is not in a position to perform its duty prescribed under the Act. By no stretch of imagination, it can be said that the allegations levelled in ground No.1 can ever be taken into consideration, because, there was nothing on record to show that at the time when the action was taken, the Municipality was found to have been negligent in removing the garbage and dirt from the Town and for that purpose, a solitary instance of a particular area, viz., Memanwada area. can ever be said to be a ground at the time when the action was taken.

Similar, is the case so far as ground No.2 is concerned, which is relating to non-maintenance of the Road. In fact, no particulars are given as to the position of the roads at the time of initiation of proceedings. No particulars have been given as to which are the roads, which are not maintained and of which area. As a a matter of fact, the Municipality has given a very satisfactory reply, pointing out that from whatever limited financial resources, the maintenance work had been carried out by the Municipality. In fact, there is nothing on record to show that the citizens have made any complaint in this behalf to the appropriate

authority.

So far as Charge No.3 is concerned, it is required to be noted that, in fact, in all the Municipalities as well as even in the Cities and Villages, there is a common problem of stray dogs and animals. There is not a single incident which is pointed out to this Court by the State that any local body is superseded on such ground.

So far as the aspect about the death of about 25 cattle is concerned, the said incident had taken place in 2001. Therafter, there is nothing on record to suggest that any such incident had ever occurred after the issuance of notice to the Municipality. It is difficult to appreciate as to how such aspect of death of some animals, which had taken place long before, viz., about one-and-a-half year back, can ever be taken as a ground for dissolving the Municipality. If such grounds are taken for dissolving the elected body, then, it may result in mockery of the democratic system.

So far as the aspect of non-distribution of water is concerned, appropriate explanation is given by the Municipality and they pointed out that the distributing agency, like Gujarat Water Resources Board, is not providing water supply as per the demand of the Municipality. Even while taking decision, the authority has also accepted the say of the Municipality that scarcity of water resulted into less supply of water, but the authority came to the conclusion that the Municipality should have properly utilised the existing water in a careful manner. The reasoning in the order in connection with the said ground is absolutely half-hearted and it seems that for the sake of taking decision against the Municipality, the finding is given on the said charge.

In connection with Ground No.5, concerning failure to maintain sewerage in a clean condition, there is absolutely nothing on record to show as to on what basis, such charge is levelled. Even no particulars are either given in the notice nor given in the conclusion, and no satisfactory reasons have been given by the authority while dealing with the said ground No.5.

So far as ground No.6, in connection with the municipal bus service and auctioning of the municipal buses, is concerned, it is required to be noted that the Vice President of the Municipality was also subjected to the proceedings under Section 37 of the Act and he has

filed a Special Civil Application, which is sub judice before this court and this Court stayed the order against the Vice President. In my view, when the matter is already sub judice and pending, it was expected from the Authority not to rely upon the said ground for the purpose of taking action under Section 263. It was not proper for the authority to initiate any proceedings for superseding the Municipality on that very ground. In any case, for the so-called personal lapse of any particular office bearer of the Municipality, the entire body cannot be superseded, especially when individual action is taken against the aforesaid individual and which is sub judice before this Court and it is under the scrutiny of this Court. This ground, therefore, could not have been taken as the basis for initiating the proceedings when the matter is sub judice before this Court in this connection.

As regards charge No.7, the authority found that the same is not proved and it is not necessary to discuss the same.

As regards the last charge regarding house tax, etc., in my view, the Committee which decided the said matter is a Statutory Committee, constituted for taking decision as per the evidence on record and for discharging quasi judicial functions. It was always open for the higher authority to review such decisions and such decisions can be challenged before the higher authority. In any case, a decision taken by the quasi-judicial authority, through its members, i.e. the members of the Appellate Committee, could never have been a subject matter of proceedings under Section 263. If the State Government was of the opinion that the members of the Committee have not acted properly, proper remedy was to take appropriate action against such members under Section 37 of the Act, but decision of a quasi-judicial authority can never be subject matter for initiating proceedings under Section 263 for superseding the entire Municipality as the powers are delegated to the Statutory authority. This ground, therefore, could not have been taken as basis for superseding the Municipality.

10. Considering the nature of the charges levelled against the Municipality for taking action under Section 263 of the Act and considering the material on record, in my view, it is not possible for this Court to arrive at a conclusion that at the time when proceedings were initiated, any rational material was available for taking action for supersession and any past or remote stray incident can never form basis for initiating such

proceedings. Unfortunately, a very casual approach is exhibited by the State Government and in a light fashion, the elected body is sent home. Reading the grounds, in my view, it cannot be said that even any of the grounds is relevant or just for initiating proceedings under Section 263.

11. Learned Advocate General, however, argued that out of eight grounds, even if one ground is found to be just, the action can be sustained and availali;ty of any one of such grounds would suffice if the same is fond to be an appropriate ground for taking action. In order to substantiate his say that if the action is taken on varous grounds and some of the grounds are found to be not proper, then also, action can be maintained even on remaining grounds, Mr.Shelat has relied upon the judgment of the Apex Court in The State of Maharashtra v. Babulal Kriparam Takkamore and others, AIR 1967 SC 1353. The Apex Court has observed in paragraph 15 of the said judgment that an administrative or quasi-judicial order, based on several grounds, all taken together, cannot be sustained, if it is found that some of the grounds are non-existent or irrelevant and, there is nothing to show that the authority would have passed the order on the basis of the other relevant and existing grounds. Mr.Shelat, however, argued that, out of several grounds, if one ground is found to be genuine, the order in question can be sustained. As observed by the Apex Court, an order, based on several grounds, some of which have been found to be non-existent or irrelevant, can be sustained if the Court is satisfied that the authority would have passed the order on the basis of the other relevant and existing grounds and the exclusion of the irrelevant or non-existent grounds could not have avoided the ultimate opinion or decision. Relying on the said judgment, it was argued by Mr.S.N. Shelat, learned Advocate General, that the order in question can be sustained on any of the relevant and existent grounds by excluding irrelevant and non-existent grounds from consideration. However, considering the grounds for the purpose of taking action, in my view, none of the grounds, as mentioned in the show cause notice, is rational or was in existence at the time when the proceedings were initiated against the Municipality. Even considering the show cause notice as well as considering the impugned order, it is clear that the action is taken in view of the cumulative effect of all the grounds. But, even if each of the grounds is separately taken into consideration, then also, none of the grounds is relevant for dissolving the Municipality.

12. There is considerable force in the submission of Mr.Nanavati to the effect that selecting a particular time for the purpose of issuing show cause notice itself suggests that the powers are not exercised bona fide. It is submitted that some of the incidents relate to the remote past and moment the Assembly was dissolved, in order to see that the elected body is replaced, the proceedings have been initiated. It is as such not in dispute that some of the charges mentioned in the show cause notice relates to a period between 2000 and 2001 and after considerable period, the proceedings have been initiated. Apart from the said aspect, considering each and every charge levelled against the Municipality, it cannot be said that the Municipality has failed to discharge its duty or there is persistent default in performance of the duty, by virtue of which there is no other option, but to dissolve the elected body.

13. The consequences of such orders are of a serious nature and, therefore, unless there are cogent and rational material and grounds available, such action cannot be taken in a casual and routine manner. In my view, it cannot be said that there was any existing ground available at the time of initiating the proceedings. It is, no doubt, true that the formation of the opinion on the part of the State Government is a subjective satisfaction of the authority, but there has to be relevant ground, which is required to be in existence for forming such subjective satisfaction. In Barium Chemicals Ltd. and another v. Company Law Board and others, AIR 1967 SC 295, the Apex Court, in paragraph 64 observed as under :-

> " ... ...
>
> 64. The object of S.237 is to safeguard the interests of those dealing with a company by providing for an investigation where the management is so conducted as to jeopardise those interests or where a company is floated for a fraudulent or an unlawful object. Clause (a) does not create any difficulty as investigation is instituted either at the wishes of the company itself expressed through a special resolution or through an order of the court where a judicial process intervene. Clause (b), on the other hand, leaves directing an investigation to the subjective opinion of the government or the Board. Since the Legislature enacted S.37(1)(a) it knew that

the Government would entrust to the Board its power under S.237(b). Could the legislature have left without any restraints or limitations the entire power of ordering an investigation to the subjective decision of the Government or the Board? There is no doubt that the formation of opinion by the Central Government is a purely subjective process. There can also be no doubt that since the legislature has provided for the opinion of the government and not of the court such an opinion is not subject to a challenge on the ground of propriety, reasonableness or sufficiency. But the authority is required to arrive at such an opinion from circumstances suggesting what is set out in sub-clauses (i), (ii) or (iii). If these circumstances were not to exist, can the government still say that in its opinion they exist or can the Government say the same thing where the circumstances relevant to the clause do not exist? The legislature no doubt has used the expression "circumstances suggesting". But that expression means that the circumstances need not be such as would conclusively establish an intent to defraud or a fraudulent or illegal purpose. The proof of such an intent or purpose is still to be adduced through an investigation. But the expression "circumstances suggesting" cannot support the construction that even the existence of circumstances is a matter of subjective opinion. That expression points out that there must exist circumstances from which the authority forms an opinion that they are suggestive of the crucial matters set out in the three sub-clauses. It is hard to contemplate that the legislature could have left to the subjective process both the formation of opinion and also the existence of circumstances on which it is to be founded. It is also not reasonable to say that the clause permitted the Authority to say that it has formed the opinion on circumstances which in its opinion exist and which in its opinion suggest an intent to defraud or a fraudulent or unlawful purpose. It is equally unreasonable to think that the

legislature could have abandoned even the small safeguard of requiring the opinion to be founded on existent circumstances which suggest the things for which an investigation can be ordered and left the opinion and even the existence of circumstances from which it is to be formed to a subjective process. This analysis finds support in Gower's Modern Company Law (2nd Ed.), p.547 where the learned author, while dealing with S.165(b) of the English Act observes that "the Board of Trade will always exercise its discretionary power in the light of specified grounds for an appointment on their own motion" and that "they may be trusted not to appoint unless the circumstances warrant it but they will test the need on the basis of public and commercial morality." There must therefore exist circumstances which in the opinion of the Authority suggest what has been set out in sub-clause (i), (ii) or (iii). If it is shown that the circumstances do not exist or that they are such that it is impossible for anyone to form an opinion therefrom suggestive of the aforesaid things, the opinion is challengeable on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute.

... ..."

Mr.Nanavati has also strongly placed reliance on the decision of the Apex Court in Tarlochan Dev Sharma v. State of Punjab and others, AIR 2001 SC 2524. In the case of removal of President of a Municipality, it has been observed by the Apex Court as under in paragraph 6, 10 and 12 :-

" ... ...

6. In a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. That a returned candidate must hold and enjoy the office and discharge the

duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held. Therefore, a case of availability of a ground squarely falling within S.22 of the Act must be clearly made out. A President may be removed from office by the State Government, within the meaning of S.22, on the ground of "abuse of his powers" of President, inter alia. This is the phrase with which we are concerned in the present case.

10. The expression 'abuse of powers' in the context and setting in which it has been used cannot mean use of power which may appear to be simply unreasonable or inappropriate. It implies a wilful abuse or an intentional wrong. An honest though erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction; maybe inconvenient or unpalatable to the person affected but it would not be an abuse of power. It must be such an abuse of power which would render a Councillor unworthy of holding the office of President. Inasmuch as an abuse of power would entail adverse civil consequences, the expression has to be narrowly construed. Yet again, the expression employed in S.22 is 'abuse of his powers or habitual failure to perform his duties.' The use of plural --powers, and the setting of the expression in the framing of S.22 is not without significance. It is suggestive of legislative intent. The phrase 'abuse of powers' must take colour from the next following expression--"or habitual failure to perform duties." A singular or casual aberration or failure in exercise of power is not enough; a course of conduct of

plurality of aberration or failure in exercise of power and that too involving, dishonesty of intention is "abuse of powers" within the meaning of S.22 of the Act. The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision.

xxx xxx xxx

12. The show cause notice alleged only this much that the Municipal Council had purchased a fogging machine of which payment was to be made but the appellant (as President of the Municipality) instructed the Executive Officer not to make the payment and this resulted in "the working of the Municipal Council having been obstructed." The finding arrived at in the impugned order dated 1.10.1999 is different. There is no finding arrived at that the working of the Municipal Council was in any manner obstructed by the appellant having instructed the Executive Officer not to make the payment. The specific stand taken by the appellant in his reply was that the machine had certain inherent defects and was not working properly and hence it was on the advice of the Municipal Council that the appellant had desired the payment not to be made. The finding as to abuse of power is based mainly on the fact that the Executive Officer had prepared a cheque and signed the same on 20.11.1998 and yet the cheque was not presented to the bank resulting in delayed payment to the supplier of the fogging machine. The impugned order also states that the cheque was kept by the appellant in his custody for over two months. These events are subsequent to the date of the show cause notice, i.e. 19.8.1998 as also to the date of appellant's reply i.e. 8.9.1998.Thus, briefly stated, the content of abuse of power, as stated in the notice dated 19.8.1998 was asking the Executive Officer not to make payment while the order dated 1.10.1999 is founded on a subsequent event

that in spite of the Executive Officer having prepared and signed the cheque on 20.11.1998, the appellant detained the cheque in his custody for about two months resulting in payment being delayed and this amounted to abuse of power. There is no finding recorded in the impugned order that the explanation furnished by the appellant was factually incorrect. A President is supposed to act in the best interests of the Municipality which he is heading. In spite of fogging machine worth lakhs having been found by the Executive Officer to be okay in its trial run, if the President was informed of the machine having certain inherent defects, there was nothing wrong in his asking the Executive Officer not to make the payment unless he was satisfied that the machine was fit for the purpose for which it was being purchased, all the more, when the funds for purchasing the machine were made available to the Municipality by the District Planning Board. Even accepting the allegations made against the appellant, as contained in the show cause notice, to be correct, his decision to withhold the payment may be said to be an erroneous or unjust decision. For this reason alone the appellant cannot be said to be guilty of an abuse of his powers. If any one suffered by delay in payment it was the supplier and not the Municipality. There is nothing in the show cause notice or the ultimate order to hold how the act of appellant had 'obstructed the working of Municipal Council" or was "against the interest of council." We are, therefore, clearly of the opinion that not only the principles of natural justice were violated by the factum of the impugned order having been founded on grounds at variance from the one in the show cause notice, of which appellant was not even made aware of let alone provided an opportunity to offer his explanation, the allegations made against the appellant did not even prima facie make out a case of abuse of powers of President. The High Court was not right in forming an opinion that the appellant was persuading the High Court to judicially review like an

appellate Court the finding arrived at by the competent authority. The present one is a case where the impugned order is vitiated by perversity. A conclusion of abuse of power has been drawn from such facts wherefrom such conclusion does not even prima facie flow. The impugned order is based on non-existent grounds. It is vitiated by colourable exercise of power and hence liable to be struck down within the well settled parameters of judicial review of administrative action.

... ..."

In order to substantiate his allegation about mala fides, Mr.Nanavati has relied upon paragraph 15 of the said judgment, which reads as under :-

" ... ...

15. In the system of Indian Democratic Governance as contemplated by the Constitution senior officers occupying key positions such as Secretaries are not supposed to mortgage heir own discretion, volition and decision making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government Services command the civil servants to maintain a all times absolute integrity and devotion to duty and do nothing which is unbecoming of a Government servant. No Government servant shall in the performance of is official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superiors. In Anirudsinhji Jadeja (1995) 5 SCC 302) (1995 AIR SCW 3543:AIR 1995 SC 2390), this Court has held that a statutory authority vested with jurisdiction must exercise it according to its own discretion; discretion exercised under the direction or instruction of some higher authority is failure to exercise discretion altogether. Observations of this Court in

> Purtabpur Company Ltd., AIR 1970 SC 1896, are instructive and apposite. Executive officers may in exercise of their statutory discretions take into account considerations of public policy and in some context policy of Minister or the Government as a whole when it is a relevant factor in weighing the policy but they are not absolved from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for instructions by a superior to bind them. As already stated we are not recording, for want of adequate material any positive finding that the impugned roder was passed at the behest or of dictated by someone lese than its author. Yet we have no hesitation in holding that the impugned roder betrays utter non-application of mind to the facts of the case and the relevant law. The manner in which the power under S.22 has been exercised by the competent authority is suggestive of betrayal of the confidence which the State Government reposed in the Principal Secretary in conferring upon him the exercise of drastic power like removal of President of a Municipality under S.22 of the ACt. To say the least what has been done is not what is expected to be done by a senior official like the Principal Secretary of awing of the State Government. We lave at that and say no more on this issue.
>
> ... ..."

14. In view of the aforesaid aspect of the matter and considering the charges levelled against the Municipality as well as considering the fact that most of the grounds were, as such, not in existence at the time when the proceedings were initiated, as some of them relates to the remote past, in my view, it cannot be said that there was any rational and existing material, which can be said to have been in existence at the time when proceedings were initiated and at the time when the final order was passed by the authority. Unfortunately, in a very casual and perfunctory manner, the elected body is removed by the impugned order. It seems that a show cause notice was issued first and, thereafter, the authority tried to collect the material for dislodging the elected body. In

fact, there is hardly any material, from which the Court can come to the conclusion that even at the time when the notice was issued, any rational ground or material was available with the authority for the purpose of initiating the proceedings. Even as stated earlier, considering the nature of the charges, as well as the grounds based on which the proceedings are initiated, in my view, none of such charges or grounds can be said to be relevant, by which it can be said that the Municipality has committed default in the performance of the duties imposed on it.

15. Some of the grounds, which are mentioned in the said show cause notice, are such that, perhaps, they will be in existence in all the Municipalities as well as available in all other local authorities in the State. It is difficult to appreciate the conduct of the State in picking up only a particular Municipality for such action. Even otherwise, some of the incidents are as back as of 2000-2001, and if there is nothing on record to show that subsequently also, the aforesaid defect or irregularity continues, in my view, the proceedings could not have been initiated without there being any existing material, as the learned Advocate General has also conceded that what is more important is the availability of grounds at the time of taking action and for that purpose, remote past incident may not be a relevant factor for taking such proceedings. At the time when the proceedings are initiated, there has to be some material, by which it can be said that at the time of taking action, the grounds are available, by which one can come to the conclusion that the Municipality has failed to exercise its powers or has abused the powers. Such ground certainly will have to be in existence at the time when proceedings are initiated and for that purpose, reference to some past incidents of some years back cannot be said to be a rational or reasonable ground. In my view, there was absolutely no rational material for the authorities for initiating the proceedings for dislodging a democratically elected Municipality in the aforesaid manner. In view of the same, in my view, the impugned order cannot be sustained, as, there is no material, by which the authority could have arrived at a subjective satisfaction for initiating the proceedings which can attract the provisions of Section 263 of the Act and on all these aforesaid grounds, the petition deserves to be allowed.

16. Considering the aforesaid aspect of the matter, in my view, the impugned order cannot be sustained. There is absolutely no justification on the part of the

State to pass the impugned order, dissolving the Municipality. The impugned roder dissolving the Municipality is accordingly quashed and set aside. The effect of the order is that the elected body of Porbandar Nagarpalika stands revived and the Porbandar Nagarpalika, which was functioning at the time of passing the impugned order will be entitled to continue its democratic function, and accordingly, petition is allowed by restoring the said Body.

17. Mr.Shelat, at this stage, has requested the Court that the present order may be stayed for a week as the State may think it fit to challenge the order by preferring an appeal. In my view, an elected body cannot be denied to continue to discharge its democratic functions even for a day when it is found that without any basis or foundation and in a casual and routine manner, the elected representatives are sent home. The prayer for staying this order cannot be accepted.

18. Before parting with this order, I must mention that there is absolutely no basis available for alleging mala fides against the concerned Minister and Mr.Nanavati has also rightly given up the said challenge. In the facts and circumstances of the case, therefore, while discharging the notice against respondent No.3, the petitioners are directed to pay token cost of Rs.1,000/-, so that, in future, before making such casual allegations about mala fides against a particular individual, appropriate care can be taken by the person, who is approaching this Court.

19. The petition is accordingly allowed. The petitioners are, however, directed to pay costs of respondent No.3, quantified at Rs.1,000/- and such costs to be paid to the respondent No.3 within one month from today. Rule is made absolute accordingly.

28th October, 2002 (P.B. Majmudar, J.)

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(apj)